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May 11, 2007

Mr. Thomas Asreen, Acting Clerk of Court
U.S. Court of Appeals for the Second Circuit
500 Pearl Street
New York, New York 10007

Re: *Ricardo A. De Los Santos Mora v. People of State of New York,*
No. 06-0341-pr (2d Cir.) (argued Apr. 9, 2007)

Dear Mr. Asreen:

This supplemental letter brief is submitted pursuant to the panel's order of April 11, 2007, to address state practice under the Vienna Convention on Consular Relations (the "Convention"); the efforts undertaken by the Department of State to ensure compliance with the Convention; and the source of the federal government's authority to require state and local law enforcement officials to provide consular notification and access to detained foreign nationals.[1]

A. State Practice Under the Vienna Convention on Consular Relations.

To the knowledge of the State Department, none or virtually none of the state parties to the Convention has allowed an individual claim for money damages for violation of requirements for consular notification and access.

[1] The court's letter also invited the United States to submit any corrections to its amicus brief. As noted at oral argument, that brief mistakenly describes *Bowman v. Chicago N.W. Ry. Co.*, 115 U.S. 611 (1885), as involving 28 U.S.C. § 1983, rather than a parallel jurisdictional provision that was also derived from § 1 of the Ku Klux Klan Act of 1871. The case, although not directly applicable, supports our position (*see* Am. Br. 24) that § 1983 should not be construed to be significantly broader than parallel jurisdictional provisions.

On January 24, 2007, the State Department sent a request to U.S. Embassies worldwide seeking information about state practice relating to consular notification requirements under the Convention. The survey asked whether the country recognized a "private right of action" for a violation of the Convention, *i.e.*, "can an individual sue in court if he or she did not receive consular notification and/or access?" The survey asked whether the failure to provide consular notification could "result in liability for monetary damages," and for any "laws, statutes, or legal cases that address the issue of monetary damages for breaches of consular notification and/or access." The survey also invited respondents to elaborate on other available remedies for a violation.

To date, the State Department has received 96 responses to this survey from our embassies, representing 91 countries that are parties to the Convention. With one possible exception, for which the State Department is currently awaiting clarification, we have identified no country in which a court has allowed or a legislature authorized a claim for money damages for violation of consular notification requirements. We are aware of no country with a legal case, statute, or other law addressing the issue of monetary damages or adjudicating a private claim for such damages.[2] Furthermore, with a handful of possible exceptions, again awaiting clarification, no country has construed the consular notification requirements of the Convention to create privately enforceable rights.[3]

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[2] A number of responses noted that monetary damages for violation of the Convention might theoretically be available under a general cause of action for government wrongdoing or similar remedy. None of those responses, however, indicated that such a claim had been allowed in a judicial proceeding, administrative proceeding, or by statute.

[3] The results of the State Department's survey are consistent with prior surveys of state practice. The United States explained in its amicus brief in *Bustillo v. Johnson*, Nos. 05-51, 04-10566, 2006 WL 271823 (S. Ct. filed Jan. 31, 2006), that surveys of foreign decisions had not disclosed a single case unambiguously endorsing a judicially enforceable individual right to challenge a criminal conviction as a remedy for violation of the Convention's consular notification requirements. *Id.* at 26 & n.9. Although amicus briefs were filed in the case on behalf of 36 nations,

The consistent practice of other state parties is "persuasive evidence" of the Convention's meaning," *Itel Containers Int'l Corp. v. Huddleston*, 507 U.S. 60, 84 (1993), because international treaties should be interpreted in accord with the "shared expectations of the contracting parties." *Air France v. Saks*, 470 U.S. 392, 399 (1985); *accord El Al Israel Airlines v. Tsui Yuan Tseng*, 525 U.S. 155, 175-176 (1999). Based on the information currently available to the State Department, it appears that the overwhelming majority of state parties agree that the Convention does not create privately enforceable individual rights of consular notification and access, and is not enforceable through a private civil action for money damages.

B. Compliance Efforts Relating To Consular Notification Requirements.

1. General overview. Although a complete description of compliance efforts is impossible within the page limits of this filing, even a summary description shows the extensive steps taken by the State Department to ensure that federal, state, and local law enforcement officials nationwide provide consular notification and access to detained foreign nationals.

Educational outreach is a crucial component of the State Department's compliance program. Since 1998, State Department personnel have conducted approximately 454 training events on consular notification and access requirements throughout the United States and its territories. *See* http://travel.state.gov/law/consular/consular_3139.html. These programs have been provided to law enforcement and criminal justice agencies; training academies and accreditation organizations; judicial and legislative groups; and gatherings of the Consular Corps (membership organizations made up of consuls resident in this country). The Department also maintains a phone line to provide specific guidance on consular notification and access.

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none identified an instance in which its courts had recognized a judicially enforceable individual right to consular notification under the Convention.

In addition, the State Department has distributed written and multi-media materials on consular notification and access to law enforcement and other government agencies in all 50 States as well as Puerto Rico and the U.S. Virgin Islands. In 1997, the State Department published *Consular Notification and Access: Instructions for Federal, State, and Local Law Enforcement Officials Regarding Foreign Nationals in the United States and the Rights of Consular Officials to Assist Them* (copy attached), more than 160,000 copies of which have been distributed nationwide.[4] The Department has distributed more than 1.07 million pocket reference cards containing essential instructions on consular notification requirements in case of detention (copy attached). The Department has distributed thousands of training videos, CD-ROMs with numerous resources, and other training materials, for a total of over 1.2 million units of instructional materials on consular notification sent out since 1998.

The Department of State has worked to incorporate information about consular notification and access into the standard training curriculum for law enforcement officials and into accreditation and other standards for law enforcement agencies. The Department proposed to 528 law enforcement training institutions in the United States the inclusion of consular notification information in their standard curriculum for police cadets. In 2006, the Commission on Accreditation for Law Enforcement Agencies (CALEA) adopted a consular notification standard for law enforcement agencies. CALEA was formed by four law enforcement associations, the members of which represent 80% of U.S. law enforcement agencies. The effect of the new standard is to require agencies seeking accreditation to adopt written directives ensuring compliance with consular notification and access obligations. As of July 2006, 562 law enforcement agencies nationwide had

[4] In April 2000, for example, the State Department sent copies of the manual to 1,400 federal trial courts, and requested that judges assist in compliance efforts by inquiring at initial arraignments of foreign nationals whether consular notification procedures had been followed.

been accredited by CALEA, with another 166 pending. The State Department also worked with the American Correctional Association and the Commission on Accreditation for Corrections Standards to develop an accreditation standard relating to consular notification and access for detention facilities nationwide. The State Department is actively engaged with other law enforcement and criminal justice organizations at the federal, state, and local level to include or emphasize consular notification requirements in those organizations' policies and procedures.

The State Department also publishes articles in law enforcement journals about the consular notification and access requirements of the Convention. In 2003, the State Department prepared a lengthy monograph on consular notification and access, which was published by the International Association of Chiefs of Police as part of their "Training Key" series. In 2005, the Department published an article in "Perspectives," the magazine of the American Probation and Parole Association, urging that probation, parole, and pre-trial services officers provide consular notification information in pre-trial interviews. The Department has published features on consular notification in "Corrections Today" and "American Jails Magazine," the membership magazines of the American Correctional Association and the American Jail Association, respectively.

The State Department disseminates extensive information about consular notification requirements via the Internet. The Department's web site, http://travel.state.gov/law/consular/consular_753.html, contains numerous resources for law enforcement officials, including the manual and other written materials described above; a training video; a model standard operating procedure; contact information for foreign consulates; and a fax form for notification purposes. There are hyperlinks to these materials from the web pages of numerous law enforcement organizations, including the National Association of District Attorneys; the National Institute of Corrections Information Center; the National Criminal Justice Association; and www.Correctionc.com. The

State Department has also developed a Web-based training class on consular notification requirements in partnership with the Federal Law Enforcement Training Center, which is available on the Center's "Distributed Learning Program" — a "virtual campus" with the potential to reach a much wider audience than can be reached through in-person training sessions. The Department also serves as a subject-matter expert for the developing Pegasus Program, a nationwide, information-sharing system for local law enforcement agencies currently used by 750 local agencies in 34 States. Pegasus contains a module designed to facilitate consular notification and access.

Although the current compliance program dates from 1997, the United States also engaged in sustained compliance efforts prior to that time. Beginning in 1970, the State Department sent letters to all 50 Governors advising them that the Convention had entered into force and reviewing its requirements. The State Department undertook an intensive effort between 1976 and 1981 to educate police officers at all levels about the requirements of the Convention. At the federal level, the State Department enlisted the help of the Department of Justice in sending guidance to federal prosecutors and investigators. On the state and local level, State Department officials attended conferences of law enforcement officials, and published articles in various law enforcement magazines to publicize the consular notification and access requirements of the Convention. The State Department also conducted periodic mass mailings to all major U.S. cities, including in 1986, December 1990-January 1991, September 1991, and April 1993, reminding law enforcement officials of the consular notification and access requirements of the Convention.

Finally, these educational and outreach efforts have been in addition to the State Department's case-specific work to ensure compliance. The State Department notifies law enforcement officials in individual cases of consular notification requirements, both in response to inquiries and also through affirmative contacts in significant cases. The State Department works to

resolve any problems that consular officers might have in obtaining access to foreign nationals. And the State Department looks into and responds to complaints by foreign governments regarding potential violations of the Convention.

2. Compliance efforts involving New York City. Many of the compliance efforts described have been directed at law enforcement operations in New York City. The Department has sent hundreds of copies of its manual, thousands of pocket reference cards, numerous training videos, and other resources relating to consular notification and access to state and local law enforcement entities in the City (including the New York Police Department; the NYPD Legal Bureau; the New York City Fire Department; the New York City Department of Corrections; the New York City Department of Probation; the New York County District Attorney's Office; the Metropolitan Transportation Authority Police Department; the Police Division of the Waterfront Commission of New York Harbor; the New York City Commission for the United Nations, Consular Corps and Protocol; and the Metropolitan Detention Center in Brooklyn).[5]

The Department of State has held 16 in-person training sessions for city and state law enforcement officials in New York. In 1999, the Department's Senior Coordinator for Consular Notification briefed New York's Deputy Attorney General and New York City District Attorneys from Manhattan, Brooklyn, and Queens. The Senior Coordinator also conducted a briefing for federal, state, and local law enforcement officials, hosted by the New York Police Department. In 2004, State Department officials briefed officers from the New York Police Department, the Corrections Department, and the Office of the Mayor. The State Department's Bureau of Consular Affairs has also worked extensively with the Diplomatic Security Service - New York Field Office,

[5] Large quantities of training materials were also send to federal law enforcement agencies with offices in New York City, including the U.S. Attorney's Office for the Southern District of New York; the Department of Homeland Security; the FBI; the DEA; and others.

and the Office of Foreign Missions - New York, to educate city officials about consular notification requirements. The Department of State has regular contact with high-level officials in the New York City Police Department and the Office of the Mayor about compliance with those requirements.

The City of New York has also undertaken extensive efforts to ensure that law enforcement officials provide consular notification and access. As detailed in the defendants' April 18, 2007, letter to the Court, the NYPD Patrol Guide contains a procedure for the processing of arrests of foreign nationals, which requires notice to a foreign national of the opportunity to contact consular officials as well as notification to the consulate at the request of the detainee or for mandatory notification countries. The Department of Corrections has a similar notification procedure.

The City of New York trains police and corrections officers on compliance with these procedures. The NYPD Police Student's Guide (available at www.nyc.gov/html/nypd/html/dc_training/pdf/2005%20Police%20Students%20Guide/1st%20Trimester/04-Policing%20a%20Multicultural%20Society.pdf) covers the mandatory requirements of consular notification and access. *Id.* at 28-30. The City conducts special training on the requirements of the Convention. *See* www.nyc.gov/html/unccp/html/consular/special_events. shtml. The Mayor's Commission for the United Nations, Consular Corps and Protocol oversees consular notification in large-scale operations in the city. *See* www.nyc.gov/html/unccp/html/community/emergency_resp.shtml.

To the State Department's knowledge, these extensive training and policy efforts have led to a high level of compliance by New York City and its law enforcement officials with consular notification and access requirements. Since 1998, the Department of State has received only 10 complaints from foreign governments of possible non-compliance with consular notification and access requirements occurring within the City of New York, involving officials at any level of government, *i.e.*, federal, state, or local. Only three complaints have been received since 2002. This

evidence suggests strongly that foreign nationals are routinely notified by law enforcement officials of the opportunity to contact consular representatives for assistance, and that consular notification is routinely given when requested by the foreign national or required by bilateral agreement.

3. Compliance within federal law enforcement agencies. Compliance with consular notification and access requirements by federal law enforcement officials is generally mandated by regulation. *See, e.g.,* 28 C.F.R. § 50.5 (Department of Justice); 8 C.F.R. § 236.1(e) (Department of Homeland Security); 28 C.F.R. § 540.45(b) (Bureau of Prisons). Federal law enforcement agencies have implemented these regulations through internal policies and procedures, one example of which (from the Bureau of Alcohol, Tobacco, Firearms and Explosives) is attached.

Federal law enforcement officers have not provided consular notification information to detained foreign nationals in tandem with warnings provided pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). Providing consular notification information in such a manner could suggest to a detainee that the rights of consular notification and access are similar to rights protected under the Fifth and Sixth Amendment. Unlike constitutional rights to remain silent and to have the assistance of counsel, however, a foreign national's right to contact consular representatives to seek assistance is not judicially enforceable by the individual. Nor are law enforcement officers obligated to cease interrogation upon a request by a foreign national to contact his consulate. Furthermore, criminal remedies such as the application of the exclusionary rule are not available for a violation of consular notification obligations.

C. Authority of the Federal Government To Require State and Local Law Enforcement Officials To Provide Consular Notification and Access.

This Court ordered the United States to address the federal government's authority "to impose treaty obligations on the states of the Union and political subdivisions thereof," following

statements by counsel for the City of New York at oral argument that could be understood to suggest that the City objects to providing consular notification and access. However, the City has now clarified in its post-argument letter that it affirmatively seeks to ensure that its law enforcement officials comply with the consular notification and access requirements in the Convention, and has voluntarily incorporated those requirements into city policies and procedures — making it unnecessary for the Court to consider the issue. *Cf. City of New York v. United States*, 179 F.3d 29, 35 (2d Cir. 1999) (explaining that constitutional system of dual sovereignty envisions "informed, extensive, and cooperative interaction of a voluntary nature" by state and local governments), *cert. denied*, 418 U.S. 1115 (2000); *Printz v. United States*, 521 U.S. 898, 934-935 (1997) (declining to consider legality of provisions applicable to officers who choose voluntarily to administer federal scheme). Under these circumstances, we respectfully suggest that the Court should decline to consider *sua sponte* the source and scope of the federal government's authority to implement treaty obligations in the context of state and local law enforcement operations.[6]

In any event, the federal government is empowered to require that state or local law enforcement officials who detain foreign nationals do so in accordance with the substantive restrictions set out in the Convention.

Since the earliest days of this country, it has been recognized that the power of the federal government is supreme in the realm of foreign affairs. The Framers of our Constitution were acutely aware of the difficulties resulting from the inability of the Continental Congress "to 'cause infractions of treaties, or of the law of nations to be punished,'" with the most notable incidents

[6] The distinct question of the President's authority under relevant treaties and statutes to have state courts implement a decision of the International Court of Justice, to which the United States is bound to comply as a matter of international law, is before the Supreme Court in *Medellin v. Texas*, No. 06-984 (S. Ct.), and will be heard and decided during the Court's October 2007 term.

involving the treatment of foreign nationals within this country. *Sosa v. Alvarez-Machain*, 542 U.S. 692, 716 (2004) (quoting J. Madison, Journal of the Constitutional Convention 60 (E. Scott ed. 1893)). The importance of national authority in the field of foreign relations, and the potential danger of state action, are recurring themes in the Federalist Papers. *See, e.g.,* The Federalist No. 3, at 10-11 (J. Jay) (Gideon ed., 2001) (national government permits uniform treaty enforcement); The Federalist No. 4, at 14 (J. Jay) (national government minimizes foreign conflict that could lead to war); The Federalist No. 22, at 111 (A. Hamilton) (under Articles of Confederation, "[t]he treaties of the United States * * * are liable to the infractions of thirteen" States, putting "[t]he faith, the reputation, the peace of the whole union * * * at the mercy of the prejudices, the passions, and the interests of every member").

In drafting the U.S. Constitution, the Framers sought to remedy the inadequacies of the Articles of Confederation by vesting in the national government the power to enter into and implement treaties. The U.S. Constitution grants to the President the "Power, by and with the Advice and Consent of the Senate, to make Treaties." U.S. Const., art. II, § 2, cl. 2. In contrast, the Constitution forbids the States from entering into "any Treaty, Alliance, or Confederation," U.S. Const., art. I, § 10, cl. 1, and permits a State to enter into an "Agreement or Compact" with a foreign power only with the approval of Congress. *Id.*, cl. 3. These provisions manifest the broad scope of the political branches' authority in this area and the limited role to be played by the States.

The federal government's authority over foreign relations extends to regulation of the treatment of foreign nationals within this country. As the Supreme Court has recognized, "international controversies of the gravest moment, sometimes even leading to war, may arise from real or imagined wrongs to another's subjects inflicted, or permitted, by a government." *Hines v. Davidowitz*, 312 U.S. 52, 64 (1941). The regulation of aliens is thus a subject "'so intimately

blended and intertwined with responsibilities of the national government' that federal policy in this area always takes precedence over state policy." *City of New York*, 179 F.3d at 34 (quoting *Hines*, 312 U.S. at 66); *see also Takahashi v. Fish & Game Comm'n*, 334 U.S. 410, 419 (1948) (contrasting federal government's broad constitutional authority over aliens in this country with States' lack of power). Indeed, the federal government has exercised this broad authority to immunize entirely certain aliens from the regulatory and law enforcement jurisdiction of state and local officials. *See, e.g.,* Vienna Convention on Diplomatic Relations, Arts. 29, 31.

Finally, the President is explicitly authorized by the Constitution to regulate consular relations in the United States and abroad. Under Article II, the President is empowered to "appoint Ambassadors, other public Ministers and Consuls," with the advice and consent of the Senate, U.S. Const., Art. II, § 2, cl. 2, and also to "receive Ambassadors and other public Ministers." U.S. Const., Art. II, § 3. Our Constitution thus reflects an international practice, dating back to the Middle Ages, of sending consular representatives to foreign nations to protect the interests of citizens abroad. *See generally Ross v. McIntyre*, 140 U.S. 453, 462-465 (1891) (describing history of consular relations).

The President exercised his constitutional authority over foreign relations and the conduct of consular relations by entering into the Convention, with the advice and consent of the Senate. The Convention establishes certain requirements for consular notification and access in order "to ensure the efficient performance of functions by consular posts on behalf of their respective States." Preamble. "With a view to facilitating the exercise of consular functions relating to nationals of the sending State," Article 36, ¶ 1, the Convention forbids officials from denying a consular representative access to and the opportunity to communicate with a detained foreign national. Officials are also prohibited from denying a detained foreign national the opportunity to contact consular officials. Finally, officers are required to notify foreign nationals of the opportunity to

contact consular officials and, where appropriate, to notify the foreign consulate of the detention. These reciprocal obligations also enable U.S. consular officers to become aware of and assist U.S. nationals detained abroad.

The Convention's requirements of consular notification and access, set forth in a treaty entered into by the Executive with the advice and consent of the Senate, establish supreme law of the land. *See* U.S. Const., art. VI, cl. 2; *Sanchez-Llamas v. Oregon*, 126 S. Ct. 2669, 2680 (2006) ("[I]t is well-established that a self-executing treaty binds the States pursuant to the Supremacy Clause, and that the States therefore must recognize the force of the treaty in the course of adjudicating the rights of litigants."). They are as binding on state and local law enforcement officials as other federal laws. *See Hines*, 312 U.S. at 64-65 (treaties are "binding upon the states as well as the nation"); *American Ins. Ass'n v. Garamendi*, 539 U.S. 396, 413-419 (2003); *see also Reno v. Condon*, 528 U.S. 141, 150-151 (2000) (state departments of motor vehicles must comply with federal restrictions on disclosure of personal information).

Exempting state or local law enforcement officials from the requirements of consular notification and access would make it impossible for the United States to comply with our treaty obligations under the Convention. The refusal of one or a small number of States to provide consular notification and access could provoke foreign governments to refuse those protections to U.S. citizens abroad. But the inability to ensure compliance with international treaties is precisely what the Framers sought to remedy by vesting authority over foreign relations in the federal government, rather than the States. *See Garamendi*, 539 U.S. 396, 413-414 (2003); *see also Chy Lung v. Freeman*, 92 U.S. 275, 279-280 (1875). As Alexander Hamilton explained in The Federalist No. 80, in discussing the federal court's power to adjudicate cases involving foreign litigants, "[t]he Union will undoubtedly be answerable to foreign powers for the conduct of its members," and "the

responsibility for an injury, ought ever to be accompanied with the faculty of preventing it."

Furthermore, the inability of the States to enter into treaties, *see* U.S. Const., Art. I, § 10, cl. 1, would mean that, if the federal government could not make reciprocal undertakings with other countries regarding the treatment of detained aliens, no such agreement would be possible. Such a result would be contrary to the Framers' understanding that the federal government possessed the full measure of sovereignty in international affairs. *See, e.g.,* The Federalist No. 42, at 215 (J. Madison) ("If we are to be one nation in any respect, it clearly ought to be in respect to other nations."). The power over international affairs, which passed directly to the Union upon independence, necessarily vested our national government with the authority to effectuate our external sovereignty by exercising rights and powers "equal to the right and power of the other members of the international family." *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 316-318 (1936).

It would be particularly anomalous to hold that the federal government lacks authority to enter into binding treaties governing consular relations and the treatment of nationals abroad given a history of such treaties dating back two centuries, to the earliest days of our nation. *E.g., Treaty of Amity, Commerce, and Navigation With Britain (Jay Treaty)*, 12 Bevans 13 (signed Nov. 19, 1794); *Treaty on Functions and Privileges of Consular Officers With France*, 7 Bevans 794 (signed Nov. 14, 1788) (1788 France Treaty).[7] Notably, a number of early treaties required local officials to take affirmative actions to aid consular officials in their performance of consular duties.[8] A court

[7] The index to Charles Bevans' collection of treaties entered into by the United States between 1776 and 1949 lists hundreds of treaties, many dating back to the late 1700s or early 1800s, that address the subject of consular relations. *See* 13 Bevans 29-30.

[8] *E.g.,* 1788 France Treaty, Article 7, 7 Bevans 797 (requiring local authorities to assist with salvage operations); Treaty of May 4, 1850, between Republic of New Granada [Colombia] and United States, Article III(9-11), 6 Bevans 882, 885 (requiring "local authorities" to preserve wrecked

should not construe the Constitution to deny a power that has been exercised since the founding of our nation and is necessary to protect our own citizens abroad. *See Curtiss-Wright Exp. Corp.*, 299 U.S. at 318; *Missouri v. Holland*, 252 U.S. 416, 433-435 (1920).[9]

Indeed, the very breath of the federal government's power to enlist the aid of state and local officials in satisfying treaty obligations underscores the primary role of the political branches in the context of treaty implementation. That primacy, in turn, highlights the need for judicial caution before construing an international treaty to create privately enforceable rights, much less a remedy of money damages against state or local officials.

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vessel until consul's arrival; to secure property of deceased foreigner; and to arrest deserting foreign seamen at consul's request); Treaty of May 8, 1878, between Italy and United States, Articles XI, XIII, XVI, 9 Bevans 91, 94-96 (directing state and local officials to "lend aid to Consular officers" in apprehending deserters from foreign vessels; directing "local authorities" to notify consul of a shipwreck and to "take all necessary measures for the protection of persons and the preservation of property"; and directing local authorities to notify consul of death of foreign national); *see also* A. Mark Weisburd, "International Courts and American Courts," 21 Mich. J. Int'l L. 877, 917 (2000) ("[T]he United States has been entering into treaties imposing duties on state officials since before Washington was inaugurated.").

[9] It is notable, furthermore, that the only affirmative steps called for by the pertinent provisions of the Convention are to notify a foreign national of the opportunity to contact his consulate and, in appropriate cases, to notify the consulate. Like a requirement to provide certain information to the federal government, which Justice O'Connor emphasized in concurrence in *Printz v. United States*, 521 U.S. 898 (1997), would not implicate Tenth Amendment restrictions against "commandeering" state or local officials, *id.* at 936, these requirements involve the purely ministerial provision of information, and at most a *de minimis* burden on state or local officials. *See also id.* at 918 (majority op., emphasizing that Court was not passing on constitutionality of federal requirements to provide information). Even assuming that the federal government's authority to enter into and implement international treaties is subject to constitutional constraints on the imposition of affirmative requirements on state or local officials, the consular notification requirements at issue here are unobjectionable. In any event, because the City of New York has voluntarily decided to provide consular notification and access to arrested foreign nationals, this case presents no occasion to address the federal government's authority to require a State or municipality to provide such information.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on May 11, 2007, two copies of the foregoing supplemental letter brief of United States as amicus curiae were served on the following counsel by overnight delivery:

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